

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UGONWA AZIKE,**

**Plaintiff,**

**v.**

**E-LOAN, INC., and ERIC KNUTDSON,  
d/b/a CAR NATION,**

**Defendants.**

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**CASE NO. 8:09CV37**

**ORDER**

This matter is before the Court on Defendant E-Loan, Inc.'s ("E-Loan") Motion to Dismiss (Filing No. 15), filed pursuant to Fed. R. Civ. Pro. 12(b)(6), and the Plaintiff's Motion to Amend the Complaint (Filing No. 18).

The Court denies without prejudice E-Loan's Motion to Dismiss, subject to re-assertion. Fed. R. Civ. Pro. 12 only permits the filing of a Motion to Dismiss pursuant to section (b)(6) so long as the Defendant files the Motion before filing a responsive pleading. See Fed. R. Civ. Pro. 12(b)(6) ("A motion asserting [a 12(b)(6)] defens[e] must be made before pleading if a responsive pleading is allowed."). Because E-Loan has already filed its Answer (Filing No. 8), Fed. R. Civ. Pro. 12(b) does not permit the subsequent filing of a 12(b)(6) Motion to Dismiss.

The Court grants the Plaintiff's Motion to Amend the Complaint (Filing No. 18). In granting the Plaintiff's Motion to Amend the Complaint, the Court orders both Defendants, E-Loan and Eric Knutdson, to file a responsive pleading in compliance with Fed. R. Civ. Pro. 15(a).

ACCORDINGLY:

IT IS ORDERED:

1. The Defendant's Motion to Dismiss (Filing No. 15) is denied without prejudice, subject to re-assertion;
2. The Plaintiff's Motion to Amend the Complaint (Filing No. 18) is granted;
3. The Plaintiff's Objection to Motion to Dismiss (Filing No. 19) is denied as moot;
4. The Plaintiff immediately will file the Amended Complaint that now appears at Filing No. 18-2, without any change, as a separate docket entry; and
5. Both Defendants, E-Loan and Eric Knutdson, will respond to the Amended Complaint within the time allowed by Fed. R. Civ. P. 15(a).

DATED this 4<sup>th</sup> day of May, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge